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Book Reviews

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CEIVERS (1920) 721, 722; *Smith v. Birmingham Disinfectant Co.*, 174 Ala. 374, 56 So. 721 (1911); *People v. Shurtleff*, 187 N. E. 271 (Ill. 1933).

Some courts, in appointing receivers under such conditions, have relied on what they characterize to be an analogy between business corporations and partnerships. *In re Yenidje Tobacco Co.* [1916] 2 Ch. 426; *In re Davis and Collett, Ltd.*, [1935] Ch. 693; *Flemming v. Heffner & Flemming*, 248 N. W. 900 (Mich. 1933); *Merrifield v. Burrows*, 153 Ill. App. 523 (1910). This comparison has been made in a few instances where there are only a few stockholders in the corporation involved so that the corporation, for practical purposes as between those interested, is said to be much like a partnership. See: *Flemming v. Heffner & Flemming*, 248 N. W. 900, 902 (Mich. 1933).

The power of a court of equity to appoint a receiver of a corporation where there is dissension among the stockholders or directors of such a serious nature as to demoralize the business of the corporation should be recognized; and the modern tendency is to recognize this power. 22 VA. L. REV. 469. While the general rule undoubtedly is that a court of equity has no power to wind up a corporation, in the absence of statutory authority, and conceding that courts should hesitate to take over the managerial duties of a private corporation and assume gurdianship of its assets, the object of a trading corporation cannot be attained and its assets become endangered when dissensions arise among factions or groups seeking control resulting in a general demoralization of the business. The cases recognize the power of a court of equity to intercede in such cases and preserve the subject of litigation *pendante lite* (*Merrifield v. Burrows*, 153 Ill. App. 523 (1910)); or to intercede in cases where fraud is charged in the management of the officers, whereby the corporation is in imminent danger of insolvency (*Blanchard Bro. & Lane v. S. G. Gay Co.*, 124 N. E. 616 (Ill. 1919)), and appoint a receiver to help straighten out the muddle. A trading corporation is organized for the pecuniary gain of its stockholders; and it is for this purpose that capital has been advanced. If circumstances arise, such as dissension among those who have managerial authority, whereby the object cannot be attained, it is the duty of its managing agents to wind it up. "To continue the business of the company under such circumstances would involve both an unauthorized exercise of corporate franchises and a breach of the charter contract." Per McGrath, J., in *Miner v. Belle Isle Ice Co.*, 93 Mich. 97, 53 N. W. 218, 17 L. R. A. 412 (1892). "It is no longer doubted, either in England or the United States, that courts of equity in both have a jurisdiction over corporations, at the instance of one or more of their members, to apply preventive remedies by injunction to restrain those who administer them from doing acts which would amount to a violation of charters." Per Mr. Justice Wayne, in *Dodge v. Woolsey*, 18 How. 331, 341 (1855).

James R. Burke.

BOOK REVIEWS

CASES ON FUTURE INTERESTS AND ILLEGAL CONDITIONS AND RESTRAINTS. By Albert M. Kales. Second Edition by Horace E. Whiteside. St. Paul: West Publishing Company. 1936.

Casebooks as a whole are not reviewed with relish by most reviewers, but there is something fascinating about a casebook on Future Interests. This may be due to the fact that Future Interests is one of the oldest branches of the law,

and because the law of real property is so diversified. It may be due to our close association with property, our desire to own it and devise it.

Professor Whiteside has done an admirable piece of work in this volume of 772 pages. Not being so voluminous, the book should appeal to those professors who teach the course in the minimum amount of time allowed by their law school. Since Future Interests is about the most difficult course taught in the field of law, it is important that the subject be properly treated. In this respect the editor through his wise selection of cases and materials, and his orderly arrangement of them has stimulated the reviewer's interest in this important subject.

The book is divided into five main parts: (1) origin and development in general; (2) construction of limitations; (3) powers; (4) rule against perpetuities; and (5) illegal conditions and restraints. Each of the five parts treats of the history, development, and modern status of the problems involved. There are thirty-six chapters divided over the five main divisions, with the chapters on limitations, powers and perpetuities receiving the fullest treatment, which after all is only natural. Part one on the origin and development of the law of future interests gives the basic principles in an orderly and logical fashion, which should prevent confusion to the student as he progresses. In the very beginning the editor treats of possibilities of reverter and rights of entry for condition broken, then in logical order comes reversions, remainders and executory interests, followed by cases on contingent and vested remainders, showing the difference between them and executory interests. Then swiftly the rule in *Shelley's Case,* freehold interests subject to a term, and future interests in personal property bring to a close part one and the student then has a proper foundation for part two dealing with construction of limitations.

Fortunately the volume is not cluttered up with repetitious cases, and only those early English cases that laid down the rules involved are given. There are very many recent cases, a large portion of which have been decided in the past five years. This is a blessing as it tends to keep the student interested and brings to his mind the present day necessity for a thorough knowledge of this branch of the law. Leading American cases are included in the collection and in many of them the facts have been rewritten to conserve space. In the celebrated case of *Moore v. Littel* Professor Whiteside has by his copious footnotes given order to this complex case and the difficulties arising therefrom.

In order to do complete justice to the editor and the book, mention must be made of the text material, the excellent footnotes and the numerous citations that the volume contains. The chapter dealing with the statutory modifications of the rule against perpetuities is a valuable addition over the first edition. The New York statutory modifications are given along with statutory changes in the other states. Excerpts from leading texts on real property and statutory provisions of the various states governing real property will enhance the value of the book to the student.

Undoubtedly Professor Whiteside's purpose in bringing out this new edition, in addition to bringing the law on future interests up to date is to serve the student and to help him master the intricate problems that arise in this perplexing course. The volume should be warmly received by both students and professors, and is highly recommended for their use.

Anthony W. Brick, Jr.

CASES ON TRADE REGULATION. By S. Chesterfield Oppenheim. St. Paul: West Publishing Company, 1936.

The publication of this voluminous casebook of 1518 pages is timely when we consider the renewed activity in business and the political rumblings in our legislative halls for further regulation of trade practices which are thought to be unwholesome and pernicious to the general welfare. The suggested statutory enactments and even constitutional amendments are numerous and far-reaching, and if passed will greatly complicate this already difficult phase of the law which is in undeniable conflict and flux. This flux is in part due to lawyers and their business men clients on the one hand attempting to get around and evade statutes which have outlawed certain practices and legislators on the other hand attempting to close these gaps. The courts have accentuated the conflict by many shifts in their position.

In this book Professor Oppenheim has been meticulous in presenting the genesis and evolution of trade regulation as it existed under the common law, which fostered the idea of competition and the suppression of contracts in restraint of trade, and under federal statutes, which have assumed various attitudes toward the business of trade and manufacturing. Of the statutes, it might be briefly said that the Sherman Anti-Trust Act sought to eliminate restraint of trade and monopoly through enforced competition. The Clayton Act provided for further prohibitions of unfair business practices, such as price discrimination, tying clauses, and stock holding which would substantially lessen competition. Under the Federal Trade Commission Act administrative machinery was set up for the closer supervision and more effective enforcement of all so-called anti-trust laws. And finally, the short lived National Industrial Recovery Act brought about complete regulation of industry through voluntary cooperation with the resultant effect of a relaxation of the anti-trust laws. All the important federal statutes involving trade regulation, with the recent Robinson-Patman Act, are set out in a lengthy appendix. While most states have some legislation on combination and monopoly the editor has wisely stressed federal laws because all of our great businesses are interstate in character, and of course, amenable to federal control.

In a review of a casebook on Contracts or Torts it would be a superfluous task to set forth the contents which by custom have become standardized and subject to very little variation. However, the newness and indefiniteness of a collection of cases entitled Trade Regulation makes a brief review of the contents necessary and essential to fulfill the informative purpose of a book review and to do complete justice to the industry of Professor Oppenheim of George Washington University.

Part I covers unfair competition in its broadest aspect, unfair competition in sales by passing off trade marks and trade names, misappropriation of intangible values (namely, business plans, literary productions, news, trade secrets, etc.), deceptive advertising, lotteries, premiums, commercial bribery, and invasion of business reputation; also obstruction of access to markets through intimidation and threats of suit, destructive price cutting, interference with contractual relations, boycotts, exclusive arrangements, tying clauses, and contracts not to compete; and finally a chapter on price practices and price policies.

Part II covers combination and monopoly under all the federal anti-trust acts with separate chapters on interstate commerce as a jurisdictional prerequisite, and procedure and remedies under those acts. The chapter on voluntary association deals with trade associations, patent pools, cooperative marketing associations, cooperative credit, and arbitration provisions in the standard contract.

The cases and materials on the above topics are exceptionally well chosen. In fact no important case is missing. Not only are there excerpts from legal period-

icals but from nonlegal sources as well. As a practical matter the extracts from business journals greatly enhance the value of the book. Although students of jurisprudence have debated the weight and importance that should be given economic and social forces as determinants of law, it is undeniable that courts have been and are greatly influenced by economic expediency in applying legal principles in their decisions. The force of precedent, though strong, is not all important, especially in this field of law.

As a rule casebooks are of very little value to the practitioner but the comprehensiveness and intensiveness of the materials coupled with extensive footnotes and exhaustive references makes this book highly useful to the practicing lawyer. The introduction of forms for the registration of trade-marks and procedure and rules of practice before the Federal Trade Commission in the appendix are intensely practical matters. To be sure, any lawyer who has acquainted himself with this book will feel fully competent to advise his business man client what he can do and what he cannot do in the field of trade agreements.

The teaching of trade regulation as a separate course in the law curriculum in a few law schools is of relatively recent development which will extend to other schools with the added importance this subject will receive in the future. This casebook, although voluminous, can be adapted to any course by a proper selection of cases and materials. The material in this book has the advantage of being already tested in the classroom through a mimeographed edition by Professor Oppenheim.

Arthur C. Gregory.

LA CONCEPTION DU DROIT INTERNATIONAL PRIVÉ, D'APRÈS LA DOCTRINE ET LA PRATIQUE AU CANADA, PAR EDAUARD FABRE SURVEYER. Librairie du Recueil Sirey. Paris. 1936.

The present work appears to be one of a series put out by members of the "Academy of International Law" (Established with the assistance of a grant from the Carnegie Foundation for International Peace). It deals with private international law as it is found in the nine provinces of the Dominion of Canada. Of these nine provinces, eight have as the basis of their laws the English common law, while those of the Province of Quebec are grounded in the early laws of France. The author does not claim to cover the whole field of private international law, even for his own country. He has rather limited his treatise to certain definite questions and included "some which are at times considered as foreign to the field." [1] As an indication of the type of information that one may find in his work, I translate the following: "I asked myself what information I should seek if by chance I should meet a foreign jurist. My first concern would be to know, in a case in which one of my fellow-countrymen should go to his country, what law would govern the latter's status and capacity? If he instituted proceedings under the law of his country, how would he test this law. If, on the contrary, he sues in his own country and obtains a judgment, what authority would this judgment have in the country of his debtor? Finally, what would be the rights in this country of my compatriot? What supplementary rights would naturalization procure for him and, before naturalization, what obstacles might the government of this country raise either to his entry or to his sojourn?"[2]

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1 P. 6.

2 Pp. 6, 7.

From this list of questions it is easily seen that the contents of the volume will be of interest to the layman as well as to the professional lawyer. The five chapters treat in order of questions of domicile; marriage; interpretation of foreign law—a particularly interesting and informative chapter; foreign judgments; strangers, naturalized citizens and immigrants. These are but so many titles to chapters. Though they give a sufficient indication of the contents of the book, they do not of course measure either its excellence or its value to the legal scholar. Such judgment must attend the actual perusal of the volume. By way, however, of direction to the readers of this Review, we may point out that its author is a judge of the Superior Court of the Province of Quebec, and a distinguished professor on the Faculty of Law in McGill University, Montreal. This high standing of the author in his profession, his evident erudition and the splendid documentation found in his pages provide sufficient guarantee that his volume deserves a place on the shelves of all who are seriously interested in legal literature.

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